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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SAMSUNG ELECTRONICS CO., LTD.

CASE NO. 3:24-cv-03959-LB

Plaintiff,

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS

V.

BROADCOM INC., BROADCOM
CORPORATION, AND AVAGO
TECHNOLOGIES INTERNATIONAL
SALES PTE. LIMITED,

Date: December 5, 2024
Time: 9:30 a.m.
Courtroom: Courtroom B, 15th Floor
Before: Hon. Laurel Beeler

Defendants.

REDACTED VERSION

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1 **I. INTRODUCTION**

2 Samsung’s opposition fails to grapple with the reality that this case involves a supplier
 3 agreement executed beyond the applicable statute of limitations, that lasted for merely six months,
 4 and admittedly had no meaningful impact on Samsung’s ability to source components from other
 5 suppliers—which means it could not have harmed competition. Stripped of its hyperbolic
 6 characterizations and misdirection on the law, all Samsung is left to complain of are the very
 7 contractual commitments to which it agreed in the Strategic Agreement. Its claims are not only
 8 stale, but not actionable under the antitrust laws.

9 To try to salvage its untimely claims, Samsung ignores the case law holding that in the
 10 context of alleged exclusive dealing or tying contracts, any claim accrues and the statute of
 11 limitations begins to run when the contract is executed—which occurred here in March 2020, well
 12 outside the four-year limitations period. Samsung instead relies on cases involving continuing
 13 conspiracies (which have no bearing here), and those where antitrust defendants affirmatively took
 14 acts to *enforce* an anticompetitive contract. Here, the only things that happened after the execution
 15 of the Strategic Agreement (and before Broadcom and Samsung agreed to its termination) were
 16 Samsung’s purchases of components pursuant to its terms, which the law makes clear are merely
 17 manifestations of the agreement itself, and not new overt acts that restart the limitations period.

18 As for its failure to plead injury-in-fact to establish Article III standing or the requisite
 19 harm to competition for antitrust standing, the sum and substance of Samsung’s response is to
 20 merely reiterate that it paid “higher prices” for components under the Strategic Agreement. That
 21 is not enough to plead a non-conclusory injury-in-fact independent of the contractual commitments
 22 it agreed to. Nor is it enough to plead harm to competition, particularly against Samsung’s
 23 admissions that before, during and after the six-month term of the Strategic Agreement, it
 24 successfully sourced components from Broadcom’s competitors. *E.g.*, Compl. ¶¶ 45, 54, 75.

25 Samsung further misdirects by contending that what matters for its exclusive dealing claim
 26 is that Broadcom was supposedly “pressured” by antitrust authorities to terminate it. But what
 27 matters is whether there was an actual effect on competition. Here, there could be none given that
 28 the agreement was in effect for just six months and did not foreclose any of Broadcom’s

1 competitors from reaching customers, including Samsung. Samsung's refusal to confront what is
 2 dispositive when it comes to exclusive dealing speaks volumes.

3 With respect to its tying claim, Samsung continues to focus on the inconsequential,
 4 quibbling with whether the Strategic Agreement could amount to a *de facto* tying arrangement,
 5 even though the contract by its terms did not condition the sale of any specific components upon
 6 Samsung's purchase of another, and Samsung's admission that it *was* able to, and in fact *did*, buy
 7 the tied product—OMH LPAMiD modules—from other suppliers during the agreement. *Id.* ¶ 54.

8 Samsung does not dispute that its monopolization and Cartwright Act claims rise and fall
 9 with its exclusive dealing and tying claims, so those claims fail as well. Absent any timely or
 10 actionable claims, Samsung's Complaint should be dismissed with prejudice.

11 II. ARGUMENT

12 A. Samsung's Claims Are Foreclosed by the Antitrust Statute of Limitations

13 1. Samsung's Claims Accrued and the Statute of Limitations Began Running When It Executed the Strategic Agreement in March 2020

14 To avoid the reality that its antitrust claims accrued in March 2020 when the parties
 15 executed the Strategic Agreement, and are thus time-barred, Samsung misrepresents the law in
 16 suggesting that there is "no such case" "holding that a plaintiff is injured by the mere act of signing
 17 an agreement." Opp'n at 7. In case after case involving challenges to contracts as unlawfully
 18 exclusive or as tying arrangements, courts in this circuit and others hold that such claims accrue
 19 and the statute of limitations begins to run when the contract is executed. *See, e.g., Aurora Enters.,*
20 Inc. v. Nat'l Broad. Co., 688 F.2d 689, 694 (9th Cir. 1982) ("[T]he mere fact that defendants
 21 receive a benefit today as a result of a contract *executed* in 1966 . . . is not enough to restart the
 22 statute of limitations." (emphasis added)); *US Airways, Inc. v. Sabre Holdings Corp.*, 938 F.3d 43,
 23 68–69 (2d Cir. 2019) ("[E]ach supracompetitive price charged to [the plaintiff] by [the defendant]
 24 pursuant to the 2006 contract was not an overt act of its own, but a manifestation of the prior overt
 25 act of *entering into the 2006 contract*. That act . . . began the running of the statute of
 26 limitations[.]" (emphasis added)). This is because the contract's execution is what establishes the
 27 rights and obligations challenged as unlawful, and is thus the act that "injures" the plaintiff and
 28 triggers the statute of limitations. *See Varner v. Peterson Farms*, 371 F.3d 1011, 1020 (8th Cir.

1 2004) (“[W]hen a complaining party was fully aware of the terms of an agreement when it *entered*
 2 *into the agreement*, an injury occurs only when the agreement *is initially imposed.*” (emphasis
 3 added)).

4 If anything, it is Samsung that fails to offer authority that the statute of limitations does not
 5 begin to run until subsequent obligations under the allegedly anticompetitive contract arise.
 6 Samsung’s references to *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321 (1971) and
 7 *CSX Transportation, Inc. v. Norfolk S. Ry. Co.*, 114 F.4th 280 (4th Cir. 2024), are misplaced. Both
 8 cases involved conspiracies—not antitrust challenges to contracts—and so the assessment of
 9 whether those conspiracies’ continuing maintenance of inflated prices or lock-out of competition
 10 were acts triggering the statute of limitations have no bearing here. Samsung’s invocation of *Pace*
 11 *Industries, Inc. v. Three Phoenix Co.*, 813 F.2d 234 (9th Cir. 1987) is similarly misplaced. There,
 12 the Ninth Circuit did not even address whether any claims accrued with the signing of a contract.
 13 Rather, the issue was whether “prosecution of a contract enforcement suit is a single overt act or a
 14 continuing antitrust violation”; the Court concluded that “it is a single overt act.” *Id.* at 239.

15 Samsung’s remaining arguments are unavailing. Allegations that “Samsung repeatedly
 16 engaged with Broadcom to modify or terminate the Strategic Agreement and that Broadcom
 17 repeatedly rebuffed those attempts,” Opp’n at 8 (citing Compl. ¶ 88), do not bear on when
 18 Samsung’s claims accrued. And while Samsung points to determinations regarding purchase
 19 quantities and amounts—those requirements were established upon execution of the Strategic
 20 Agreement. Samsung’s claims accrued when it executed the Strategic Agreement in March of
 21 2020 and are time-barred under the four-year antitrust statute of limitations.

22 2. Samsung Has Not and Cannot Plead Any Overt Acts by Broadcom to
Invoke the Continuing Violations Exception

23 Samsung tries to invoke the continuing violations exception by mischaracterizing
 24 allegations reflecting mere performance under the Strategic Agreement (and Broadcom’s
 25 corresponding receipt of benefits) as overt acts by Broadcom to “enforce” the agreement. Samsung
 26 contends that it suffered a “new and accumulating injury” “each time it was forced to purchase
 27 exclusively from Broadcom . . . and forced to buy components from Broadcom that it would have

1 preferred to purchase elsewhere[.]” Opp’n at 9–10. But subsequent purchases of components by
 2 Samsung did not result from further acts by Broadcom; they were the natural consequences of the
 3 Strategic Agreement. And the fact that prices and quantities were set throughout the term of
 4 the agreement does not make those purchases “overt acts.” Samsung’s complaint is that all its
 5 purchases under the Strategic Agreement were at undesirable prices because the minimum
 6 purchase requirement “made it impossible for Samsung to purchase from Broadcom’s
 7 competitors[.]” Opp’n at 12 (citing Compl. ¶ 8). Those purchases were only “manifestation[s]”
 8 of that prior agreement and not any “new and independent act” that restarted the limitations period.
 9 See *US Airways*, 938 F.3d at 68–69 (“each supracompetitive price charged . . . [under] the contract
 10 was not an overt act of its own” but a continuation of the initial decision to enter into the . . .
 11 contract); *Airweld, Inc. v. Airco, Inc.*, 742 F.2d 1184, 1190 (9th Cir. 1984) (a purchaser’s
 12 “voluntary conduct” pursuant to a contract to buy separate tied products is not “active enforcement
 13 of an illegal contract”); *Varner*, 371 F.3d at 1019–20 (“Performance of the alleged anticompetitive
 14 contracts during the limitations period is not sufficient to restart the period.” (citations omitted)).¹

15 Samsung’s attempt to analogize this case to those where defendants actually took actions
 16 to enforce a contract that restarted the limitations period also fail. In *Samsung Electronics Co. v.*
 17 *Panasonic Corp.*, 747 F.3d 1199, 1202–04 (9th Cir. 2014), the Ninth Circuit held that the
 18 defendants, contributors to a patent pool that licensed standards-essential patents for SD memory
 19 cards, engaged in a new and overt act when they sought to have Samsung adopt a new patent
 20 license covering second-generation SD Cards. The Court held that even though the royalty rate
 21 under the license was the same as for prior generation SD Cards, the defendants’ attempt to enforce
 22 the new patent license agreement on Samsung was an overt act, because the old license “did not
 23 contemplate future expansion, nor did it foreclose future agreements on different terms.” *Id.* at
 24 1204. *Samsung v. Panasonic* is of no help to Samsung here, where the claimed “enforcement” by
 25 Broadcom did not involve attempts to enter into a new agreement, or expand or extend the Strategic

26 ¹ See also *Eichman v. Fotomat Corp.*, 880 F.2d 149, 160 (9th Cir. 1993) (the “passive receipt of
 27 profits” from an allegedly illegal contract was not an “overt act of enforcement which . . .
 28 restart[ed] [the] statute of limitations”); *Aurora Enterprises*, 688 F.2d at 694 (active enforcement
 of an illegal contract may restart the statute of limitations, but mere receipt of benefits does not);
Grand Rapids Plastics, Inc. v. Lakian, 188 F.3d 401, 406 (6th Cir. 1999).

1 Agreement, but rather accepting payments from Samsung for products shipped during its term.

2 Samsung's reliance on *Pace Industries* is similarly flawed. The "enforcement" in *Pace*
 3 that constituted an overt act was the defendant's initiation of a lawsuit to enforce a contract. 813
 4 F.2d at 237. Here, all Samsung contends Broadcom did to "enforce" the Strategic Agreement was
 5 refuse to modify or terminate it on certain occasions. Opp'n at 8. That inaction is not the type of
 6 enforcement found in *Pace* sufficient to restart the limitations period.

7 Samsung also cannot rely on cases in which courts found repeated acts in furtherance of an
 8 anticompetitive conspiracy sufficient to start the limitations period anew. *Hennegan v. Pacifico*
 9 *Creative Service, Inc.*, 787 F. 2d 1299 (9th Cir. 1986), involved a conspiracy where tour operators
 10 agreed to shepherd tourists to certain souvenir vendors in exchange for unlawful payments. The
 11 Ninth Circuit held that the shepherding of tourists to vendors who were part of the conspiracy were
 12 overt acts undertaken in furtherance of the conspiracy and therefore not beyond the statute of
 13 limitations. *Id.* at 1300–02. *Columbia Steel Casting Co., Inc. v. Portland Gen. Elec. Co.*, 111 F.3d
 14 1427, 1444–45 (9th Cir. 1996) involved a market-division conspiracy among electrical utilities
 15 where one utility's refusal to transmit another utility's electricity to the plaintiff's industrial plant
 16 was an overt in furtherance of the conspiracy. *Id.* In both cases, the overt acts were not mere
 17 consequences of a pre-limitations act, but rather acts undertaken by co-conspirators that *furthered*
 18 the unlawful conspiracy. They do not lend anything to situations involving contracts like here,
 19 where the "acts" identified are merely performance obligations required under the contract itself.

20 Everything Samsung identifies as a supposed "overt act"—the purchases made and prices
 21 paid by Samsung for components and Broadcom's refusal to "renegotiate or terminate the Strategic
 22 Agreement within the limitations period," Opp'n at 11, are just manifestations of the pre-
 23 limitations agreement that do not restart the limitations period. "Any other holding would destroy
 24 the function of the statute, since parties may continue indefinitely to receive some benefit as a
 25 result of an illegal act performed in the distant past." *Aurora Enterprises*, 688 F.2d at 694.

26 **B. Samsung's Claims Fail Because It Cannot Plead Injury-in-Fact or Any Harm
 27 to Competition**

28 1. Samsung's Conclusory Allegations of "Higher Prices" Do Not Establish
 the Requisite Injury-in-Fact for Article III Standing

Samsung's main response to whether it adequately pleads injury-in-fact is to reiterate that it "paid higher prices" under the terms of the Strategic Agreement and say, in a circular fashion, that it is sufficient. Opp'n at 11. That, however, does not solve Samsung's failure to allege any concrete injury beyond the fact that it was subject to the Strategic Agreement. In an antitrust case, a plaintiff must have "suffered an injury which bears a causal connection to the alleged antitrust violation." *Lucas Auto. Eng'g., Inc. v. Bridgestone/Firestone, Inc.*, 140 F.3d 1228, 1232 (9th Cir. 1998). Merely claiming that prices were "higher," absent allegations connecting those prices to anticompetitive conduct or a lessening in competition, does not suffice. *See Prime Healthcare Servs., Inc. v. Serv. Emps. Int'l Union*, 642 F. App'x 665, 666–67 (9th Cir. 2016) (affirming dismissal as "[c]onclusory 'allegations that an agreement has the effect of . . . increasing prices to consumers do not sufficiently allege an injury to competition.''" (cleaned up)).

The reason Samsung focuses so much on its conclusory allegations of "higher prices" is because it needs the Court to ignore the non-conclusory allegations reflecting (the reality) that the Strategic Agreement, effective for only six months, did not preclude Samsung from securing other sources of supply at its preferred prices. Samsung admits that it multi-sourced components in 2019, Compl. ¶¶ 5, 59, bought from Qorvo before and during the Strategic Agreement, *id.* ¶¶ 54, 60, 85, and, after the agreement's termination, immediately sourced chips from Qualcomm, *id.* ¶ 45. This all contradicts the conclusory claims of "higher prices" and that the "minimum purchase requirement . . . made it impossible for Samsung to purchase from Broadcom's competitors." Opp'n at 12. Samsung also ignores that the Strategic Agreement could not force it to take "higher" prices given a [REDACTED]

[REDACTED] ECF No. 25-2 §§ B, E. Against these contradictions, the conclusory allegations that the agreement "resulted in . . . higher prices," Compl. ¶¶ 10, 87, fails to establish injury-in-fact. Samsung lacks Article III standing.²

² Samsung's reference to the Korea Fair Trade Commission investigation does not supplant Samsung's burden of alleging injury-in-fact. *See, e.g., In re Capacitors Antitrust Litig.*, 106 F. Supp. 3d 1051, 1064 (N.D. Cal. 2015) (government investigations by foreign authorities "carry no weight" as to whether plaintiffs alleged plausible claims for relief).

1 2. Samsung's Allegations of Higher Prices Without Harm to Competition
 2 Precludes Antitrust Injury

3 Samsung's pleading deficiencies similarly preclude it from establishing an antitrust injury.
 4 Antitrust injury requires more than a conclusory allegation that a plaintiff was injured by "higher
 5 prices." Rather, an "antitrust injury . . . [must] 'flow[] from that which makes defendants' acts
 6 unlawful" under the antitrust laws, *Am. Ad Mgmt., Inc. v. Gen. Tel. Co. of Cal.*, 190 F.3d 1051,
 7 1056 (9th Cir. 1999), and must be "the type of injury the antitrust laws were designed to prevent"—
 8 which is "an injury to *competition*." *W. Parcel Exp. v. United Parcel Serv. of Am., Inc.*, 65 F. Supp.
 9 2d 1052, 1064 (N.D. Cal. 1998), *aff'd*, 190 F.3d 974 (9th Cir. 1999) (emphasis added). It is this
 10 issue that separates contractual injury and *antitrust* injury. *See Glob. Tel*Link Corp. v. JACS Sols. Inc.*, 708 F. Supp. 3d 784, 796 (E.D. Va. 2023) (plaintiff lacked antitrust standing where injury
 11 was "not dependent on the existence of an antitrust violation" but flowed from contractual
 12 obligations). Where the "antitrust plaintiff 'would have suffered an identical loss' if the contract
 13 were not unlawful," the plaintiff's claim lies in contract, not antitrust. *Id.* (citations omitted).

14 Against these principles, Samsung's pleading deficiencies are glaring. Its singular focus
 15 on "higher prices" circumvents the core inquiry underlying antitrust injury—whether Broadcom's
 16 alleged conduct foreclosed competition among fellow suppliers. *See Allied Orthopedic Appliances Inc. v. Tyco Health Care Grp. LP*, 592 F.3d 991, 996 (9th Cir. 2010) ("[A]n exclusive dealing arrangement violates Section 1 [of the Sherman Act] only if its effect is to foreclose competition in a substantial share of the line of commerce affected."); *Power Analytics Corp. v. Operation Tech., Inc.*, No. SA CV16-1955, 2018 WL 10231437, at *18 (C.D. Cal. July 24, 2018), *aff'd*, 820 F. App'x 1005 (Fed. Cir. 2020) ("The 'ultimate question' in an exclusive dealing case is whether the defendant's conduct harmed competition." (simplified)); *PNY Techs., Inc. v. SanDisk Corp.*, No. 11-cv-4689, 2014 WL 2987322, at *10 (N.D. Cal. July 2, 2014) (dismissing an exclusive dealing claim for failure to plead "substantial foreclosure of competition"); *Feitelson v. Google Inc.*, 80 F. Supp. 3d 1019, 1030 (N.D. Cal. 2015) (exclusive dealing is actionable "only if its effect is to foreclose competition in a substantial share of the line of commerce affected" (simplified)).

28 This is the exact pleading defect identified in *PNY v. SanDisk*, where plaintiff (also

1 represented by Samsung’s counsel) argued that defendant’s alleged exclusive dealing harmed
 2 competition “in the form of supra-competitive prices.” 2014 WL 2987322, at *10 n.17. The court
 3 rejected the plaintiff’s attempt to plead antitrust injury solely on higher prices, as “the existence of
 4 supra-competitive prices does not, in itself, suggest foreclosure.” *Id.* Rather, “[t]here could be
 5 any number of reasons to explain why . . . prices . . . may have stayed steady or risen, but needless
 6 to say, the mere fact that exclusive arrangements with [defendant] were in place at the time does
 7 not indicate causality.” *Id.* Yet assuming causality is precisely what Samsung asks the Court to
 8 do. By merely pointing to the bare allegation that it paid “higher prices,” Samsung assumes harm
 9 to competition and a viable antitrust injury. *PNY*, however, instructs that such a threadbare
 10 allegation is insufficient.

11 Further, any attempt by Samsung to allege that the higher prices resulted from a harm to
 12 competition is precluded by its own admissions that competition was *not foreclosed*. Samsung
 13 admits that it continued to successfully source from Broadcom’s competitors before, during, and
 14 after the Strategic Agreement, and that any difficulties it had multi-sourcing was due to external
 15 factors unrelated to the Strategic Agreement—namely, that a primary barrier to for other suppliers
 16 is that “[d]evelopment of [BT/WiFi, GNSS/GPS, and OMH LPAMiD] chips takes years and costs
 17 millions of dollars and requires difficult to obtain technological expertise.” Compl. ¶¶ 46, 52, 57.

18 Take *Western Parcel Express v. UPS* for example. There, a competitor claimed that UPS
 19 unlawfully required shippers to ship via UPS regionally, and the court reasoned that “[i]n order for
 20 the [agreements] to be illegal restraints, [plaintiff] must show that the probable effect of the
 21 [agreements] is to foreclose competition in a substantial portion of the market.” 65 F. Supp. 2d at
 22 1064. The court concluded that UPS’s shipper agreements were not “in fact exclusive,” as “none
 23 of the contracts contain[ed] terms requiring a customer to give all of its shipping business to UPS.”
 24 *Id.* at 1065. While the contracts “require[d] . . . certain levels of volume in order to receive agreed
 25 pricing discounts” and made UPS the preferred carrier, those terms were “not a *requirement* that
 26 the customer can use only UPS.” *Id.* (emphasis in original). Nothing prevented competitors from
 27 “obtain[ing] one of UPS’s customers by offering better prices or services,” and so the requisite
 28 harm to competition did not exist. *Id.* The Strategic Agreement similarly was not by its terms

1 exclusive and Samsung admittedly sourced from Broadcom's competitors before, during, and after
 2 the agreement. Samsung has not pled the requisite harm to competition. *See Power Analytics*,
 3 2018 WL 10231437, at *22; *PNY*, 2014 WL 2987322, at *4.

4 **C. Samsung Fails to Plead Any Unlawful Exclusive Dealing**

5 1. The Strategic Agreement's Six-Month Duration, Coupled with the
Admissions that Samsung Was Not Precluded from Securing Alternate
Supply, Precludes Any Claim of Exclusive Dealing

7 Samsung badly misconstrues Broadcom's argument regarding the failure to plead an
 8 unlawful exclusive deal as premised on the notion that "because [the Strategic Agreement] did not
 9 expressly require Samsung to give Broadcom 100% of its business," it was not exclusive. Opp'n
 10 at 15. In quibbling with whether *de facto* exclusive dealing is actionable under the antitrust laws,
 11 Samsung distracts from the dispositive issue dooming its exclusive dealing claims: whether the
 12 Strategic Agreement had the *effect* of "foreclosing competition in a substantial share of the line of
 13 commerce affected." *FTC v. Qualcomm Inc.*, 969 F.3d 974, 1003 (9th Cir. 2020) (simplified). It
 14 is this effect on *competition*—specifically, those "opportunities for other traders to enter into or
 15 remain in that market," *id.*—that distinguishes contracts merely limiting the buying opportunities
 16 of one customer from those contracts that unlawfully foreclose competition among competing
 17 sellers. *See also id.* ("The competition foreclosed by the contract must be found to constitute a
 18 substantial share of the relevant market . . . that is to say, the opportunities for other traders to enter
 19 into or remain in that market must be significantly limited."). "[V]irtually every contract to buy
 20 'forecloses' or 'excludes' alternative sellers from some portion of the market, namely the portion
 21 consisting of what was bought." *Barry Wright Corp. v. ITT Grinnell Corp.*, 724 F.2d 227, 236
 22 (1st Cir. 1983). But that itself is not enough, because "[t]he main antitrust objection to exclusive
 23 dealing is its tendency to 'foreclose' existing competitors or new entrants from competition in the
 24 covered portion of the relevant market during the term of the agreement." *Omega Envt'l, Inc. v.*
 25 *Gilbarco, Inc.*, 127 F.3d 1157, 1162 (9th Cir. 1997) (simplified).

26 Here, Samsung acknowledges that competition for the provision of the chips and
 27 components Samsung wanted to source existed before, during, and after the Strategic Agreement.
 28 Compl. ¶¶ 45, 75. Samsung admits that "during the relevant time period, [it] purchased OMH

1 LPAMiD Modules from both Broadcom and Qorvo,” *id.* ¶ 54, and that “Qualcomm has recently
 2 launched a phone standalone BT/Wi-Fi chip in competition with Broadcom and Samsung and
 3 recently begun sourcing BT/Wi-Fi chips from Qualcomm,” *id.* ¶ 45. Samsung also does not (and
 4 cannot) allege that any of Broadcom’s competitors went out of business, had their capabilities
 5 materially diminished, or experienced financial hardship due to the Strategic Agreement.

6 Samsung offers no answer for how its allegations, which confirm the absence of any effect
 7 of the Strategic Agreement on competition, do not doom its exclusive dealing claims. Samsung
 8 merely reiterates that the agreement is *de facto* exclusive because its annual purchase commitments
 9 apparently “exceeded” what Samsung needed to buy. But that ignores the dispositive issue:
 10 whether the “contract[] that w[as] induced”—here, the Strategic Agreement—“w[as] exclusive
 11 rather than run-of-the-mill . . . , which inevitably . . . [excludes] alternative sellers from some
 12 portion of the market, namely the portion consisting of what was bought.”³ *Aerotec Int’l, Inc. v.*
 13 *Honeywell Int’l, Inc.*, 836 F.3d 1171, 1182 (9th Cir. 2016) (simplified). “The ‘de facto’ exclusive
 14 dealing theory does not provide [a plaintiff] an end run around the obligation to first show that
 15 express or implied contractual terms in fact substantially foreclosed dealing with a competitor for
 16 the same good or service.” *Id.* The answer—by Samsung’s own admissions—is no.

17 Samsung’s allegations (at ¶ 75) that “[e]ven where competitive alternatives to Broadcom
 18 components were available, it was (and remains) impossible to redesign a Samsung mobile device
 19 to include non-Broadcom components and obtain the required regulatory approvals to sell the
 20 redesigned device in less than six months” also do not move the needle. They actually establish
 21 that factors *other* than the Strategic Agreement hindered Samsung’s ability to fully operationalize
 22 its multi-sourcing strategy. And as soon as Samsung could, it terminated the Strategic Agreement
 23 and began sourcing components immediately from Qorvo and Qualcomm. *Id.* ¶¶ 45, 54.

24 A similar dynamic existed in *FTC v. Qualcomm*, where the Ninth Circuit held that a supply
 25 agreement between Apple and Qualcomm for CDMA modem chips was not unlawfully exclusive.
 26

27 ³ Contrary to Samsung’s assertion, the Ninth Circuit has not even endorsed a *de facto* theory of
 28 exclusionary dealing. See *Aerotec*, 836 F.3d at 1182 (“Although we have not explicitly recognized
 a ‘de facto’ exclusive dealing theory like that recognized in the Third Circuit and Eleventh Circuit
 . . . we need not reach the issue here.”).

1 969 F.3d at 1004–05. There, “[d]uring the relevant time period . . . the only serious competition
 2 Qualcomm faced with respect to the Apple contracts was from Intel, a company from whom Apple
 3 had considered purchasing modem chips prior to signing the 2013 agreement with Qualcomm.”
 4 *Id.* at 1004. “Intel won Apple’s business *the very next year*,” and there was no indication “that the
 5 [agreement between Qualcomm and Apple] delayed Apple’s transition to Intel by any more than
 6 one year.” *Id.* The agreement accordingly “did not have the actual or practical effect of
 7 substantially foreclosing competition in the CDMA modem chip market.” *Id.* at 1004–05. As in
 8 *Qualcomm*, the admitted circumstances here regarding the independent impediments to Samsung’s
 9 multi-sourcing strategy and Samsung’s success in securing supply after the termination confirm
 10 that the Strategic Agreement did not foreclose competition.

11 Samsung’s argument that the Strategic Agreement is not entitled to antitrust immunity
 12 because it was purportedly terminated due to regulatory pressure, Opp’n at 17–18, is another red
 13 herring. Broadcom has never argued that the Strategic Agreement is immune from the antitrust
 14 laws. Rather, Broadcom’s argument is that Samsung cannot plead that the Strategic Agreement is
 15 unlawfully exclusive because, by being in effect for six months, it did not impact Samsung’s ability
 16 to secure alternate supply or harm competition among component suppliers. It is these elements
 17 that make the Strategic Agreement no different than contracts courts consistently conclude are not
 18 unlawfully exclusive. *See* Mot. at 18, 20 (collecting authorities). Regardless of why the parties
 19 terminated it, the Strategic Agreement admittedly had no effect on the “opportunities for other
 20 traders”—*i.e.*, Broadcom’s competitors—“to enter into or remain in th[e] market.” *Qualcomm*,
 21 969 F.3d at 1003. That is fatal to Samsung’s exclusive dealing claims.

22 2. Samsung’s Foreclosure Shares Rest on Improper Product Markets

23 Samsung cannot credibly deny that its alleged foreclosure shares are premised on
 24 implausible product markets gerrymandered around the “Critical Components” that Samsung
 25 contractually agreed to purchase. Samsung disputes that its proposed product markets are
 26 improper single-brand markets, but it cannot run away from its allegations that (i) “Broadcom has
 27 been the sole merchant global supplier of phone standalone BT/Wi-Fi chips, affording it a 100%
 28 share of sales in the relevant Global Phone Standalone BT/Wi-Fi Chip Market,” Compl. ¶ 43, and

1 (ii) “Broadcom has been the sole competitor in the Global Phone Standalone GNSS/GPS Chip
 2 Market, affording it a 100% share of sales in the Global Phone Standalone GNSS/GPS Chip
 3 Market,” *id.* ¶ 47. A relevant market defined around a product to give one brand 100% market
 4 share is by definition a single-brand market. *See Innovative Health LLC v. Biosense Webster, Inc.*,
 5 19-cv-1984, 2022 WL 1599713, at *5 (C.D. Cal. Mar. 22, 2022) (“Each of the three catheter
 6 markets that [plaintiff] purports to define includes only one product from one brand This is
 7 precisely the definition of a single-brand market.” (simplified)), *rev’d on other grounds*, No. 22-
 8 55413, 2024 WL 62948 (9th Cir. Jan. 5, 2024). Samsung has not pleaded the “rare and unforeseen
 9 circumstances” to support single-brand markets defined around Broadcom’s own components.
 10 *Apple Inc. v. Psystar Corp.*, 586 F. Supp. 2d 1190, 1198 (N.D. Cal. 2008).

11 Samsung also does not dispute that it improperly defines product markets co-extensively
 12 with the “Critical Components” it committed to purchase under the Strategic Agreement. A
 13 properly defined relevant market must include all “sellers or producers who have actual or potential
 14 ability to deprive each other of significant levels of business.” *Thurman Industries, Inc. v. Pay ‘N
 15 Pak Stores, Inc.*, 875 F.2d 1369, 1374 (9th Cir. 1989). In assessing foreclosure, a relevant market
 16 must “include[] the full range of selling opportunities reasonably open to rivals, namely, all the
 17 product and geographic sales they may readily compete for.” *Omega*, 127 F.3d at 1163
 18 (simplified). A plaintiff alleging exclusive dealing cannot short-circuit this requirement by
 19 limiting the market to products covered by the challenged contract. That is because “adopt[ing]
 20 [the] position that contractual restraints render otherwise identical products non-interchangeable
 21 for purposes of relevant market definition” would mean that “any exclusive dealing arrangement,
 22 output or requirement contract, or franchise tying agreement would support a claim for violation
 23 of antitrust laws.” *Queen City Pizza, Inc. v. Domino’s Pizza, Inc.*, 124 F.3d 430, 438 (3d Cir.
 24 1997). “[F]or this reason, no court has defined a relevant product market with reference to the
 25 particular contractual restraints of the plaintiff.” *Id.*; *see also Forsyth v. Humana, Inc.*, 114 F.3d
 26 1467, 1476 (9th Cir. 1997) (rejecting “attempt to limit the relevant market to acute care hospitals
 27 used by [the defendant’s] insureds,” as their use of those hospitals was governed by “contractual
 28 provisions in their . . . policies”). Samsung cannot do so here.

Samsung further contends that it “has defined the markets based on functionality and cross-elasticity of demand,” Opp’n at 21, but the Complaint’s allegations are conclusory and mostly parrot those legal terms, *see e.g.*, Compl. ¶¶ 31, 32, 35, 40. “[M]erely restat[ing] a commonly used test for market definition without providing any factual basis for the claim” is insufficient to plead a relevant market. *Psystar*, 586 F. Supp. 2d at 1198. Samsung also cannot dispute that it is improperly isolating Phone Standalone BT/Wi-Fi chips, Phone Standalone GNSS/GPS chips, and OMH LPAMiD Modules into their own markets by excluding components that share similar functionality but are not customized for Samsung’s smartphones. This cannot be squared with the fact that “[c]ourts have repeatedly rejected efforts to define markets by price variances or product quality variances.” *In re Super Premium Ice Cream Distribution Antitrust Litig.*, 691 F. Supp. 1262, 1268 (N.D. Cal. 1988). Nor can it be squared with Samsung’s contradictory admission that it was able to ship its Galaxy Note 20 smartphone with “Broadcom’s older, less advanced BCM47755 [GNSS] chip.” Compl. ¶ 72. And Samsung cannot distinguish *StreamCast Networks, Inc. v. Skype Technologies, S.A.*, 547 F. Supp. 2d 1086 (C.D. Cal. 2007). The plaintiff there sought to do exactly what Samsung tries here—define a relevant market around the “unique attributes and components” that made the defendant’s product “more attractive and efficient”—a gambit that failed given the admitted existence of other products that “permit users to accomplish the same basic task.” *Id.* at 1095. Samsung has not alleged foreclosure, given its gerrymandered markets around the BT/Wi-Fi and GNSS Chips and OMH LPAMiD modules it purchased from Broadcom. Those markets are implausible, “not natural, artificial,” and “contorted to meet [Samsung’s] litigation needs.” *Hicks v. PGA Tour, Inc.*, 897 F.3d 1109, 1121 (9th Cir. 2018) (simplified).

D. Samsung Fails to Plead a Tying Agreement

1. The Strategic Agreement’s Minimum Purchase Requirement Is Not an Unlawful Tying Arrangement, “De Facto” or Otherwise

“The paradigmatic unlawful tying relationship exists where a seller expressly conditions the sale of the tying product on the buyer’s additional purchase of the tied product.” *Apple iPod iTunes Antitrust Litig.*, No. C 05-00037, 2009 WL 10678931, at *3 (N.D. Cal. May 15, 2009). Faced with a lack of any express tying conditions in the Strategic Agreement, Samsung insists that the lynchpin of a tying arrangement is “coercion,” Opp’n at 22, and that the Strategic Agreement

1 had the *effect* of conditioning Broadcom's sale of BT/Wi-Fi and GNSS/GPS chips on Samsung's
 2 purchase of OMH LPAMiD modules from Broadcom because “[p]aying twice for the same
 3 component—paying Broadcom's competitor for the component and paying Broadcom under the
 4 ‘take or pay’—was not economically viable.” Compl. ¶¶ 8, 111, 122.

5 While courts have recognized *de facto* tying agreements, “[l]iability in such cases . . . is
 6 limited where separate purchase of the allegedly tying and tied products is a ‘reasonable
 7 alternative’ to buying the seller’s packaged product.” *Apple iPod iTunes Antitrust Litig.*, 2009 WL
 8 10678931, at *3. Samsung cites *Ways & Means, Inc. v. IVAC Corp.*, 506 F. Supp. 697, 701 (N.D.
 9 Cal. 1979), for the proposition that a tying arrangement may exist where the “only viable economic
 10 option is to purchase the tying and tied products in a single package.” Opp’n at 23. That case only
 11 supports dismissal here, as the plaintiffs failed to establish a tying arrangement because they could
 12 and did purchase the allegedly tied product from alternate suppliers. See 506 F. Supp. at 702.
 13 Similarly, Samsung—by its own admissions—concedes that it at all times was able to negotiate
 14 and secure alternate supply for its desired components.

15 Samsung’s tying claims also fail because [REDACTED]
 16 [REDACTED]. In *Centennial Sch. Dist. v. Indep. Blue Cross*, No. Civ. A. 93-3456, 1994 WL 62016, at *5 (E.D. Pa. Feb. 28, 1994), a
 17 minimum purchase agreement that required the plaintiff to buy an unwanted health insurance plan
 18 was challenged as an unlawful tying arrangement. The court dismissed the claim on the pleadings
 19 as “[t]he minimum purchase requirement may be satisfied in any way: by the purchase of [the
 20 tying product] alone, by the purchase of [the tied product] alone, or by any combination of the
 21 two.” *Id.* Because “the minimum participation agreement [did] not require purchase of the [tied
 22 product],” there was no unlawful tie. *Id.* So too here.

24 Samsung’s reliance on *Datagate, Inc. v. Hewlett-Packard Co.*, 60 F.3d 1421 (9th Cir.
 25 1995), is also unavailing. There, the defendant would not provide software service if its customer
 26 purchased hardware from a third party, and the customer “could not afford to do without
 27 [defendant’s] software maintenance.” *Id.* at 1426. Because the “[defendant’s] threat to withhold
 28 software service precluded [the customer] from considering other providers of hardware service,”

1 there was a triable issue as to whether this was a coercive tying arrangement. *Id.* By contrast, the
 2 Strategic Agreement did not condition sales of any products upon Samsung's purchase of another.

3 2. Samsung's Tying Claims Fail Because It Has Not Alleged a Cognizable
Tying Product Market or Market Power

4 Samsung's tying claims also falter because it fails to allege a cognizable tying product
 5 market and thus the requisite market power. *Paladin Assocs., Inc. v. Montana Power Co.*, 328
 6 F.3d 1145, 1159 (9th Cir. 2003). As explained above (at Section II.C.), Samsung cannot artificially
 7 narrow markets defined by the constraints it agreed to by contract. The Third Circuit's *Queen City*
 8 *Pizza* decision explains why Samsung's approach is flawed. There, franchisees argued that
 9 Domino's requirement that franchisees only use Domino's-approved pizza ingredients was an
 10 unlawful tying arrangement. 124 F.3d at 442. The Third Circuit rejected the attempt to plead a
 11 relevant tying market consisting of only Domino's-approved products covered by the franchise
 12 agreement, because the "contractual restraints assumed by a plaintiff are not sufficient by
 13 themselves to render interchangeable commodities non-interchangeable for purposes of relevant
 14 market definition." *Id.* at 443. When "the defendant's 'power' to 'force' plaintiffs to purchase the
 15 alleged tying product stems not from the market, but from plaintiffs' contractual agreement to
 16 purchase the tying product, no claim will lie." *Id.* Those are precisely Samsung's allegations here:
 17 Samsung's "Phone Standalone BT/Wi-Fi Chip Market" and "GNSS/GPS Chip Market" are based
 18 in artificial restraints created by the Strategic Agreement itself.
 19

20 E. **Samsung's Monopolization and California Cartwright Act Claims Fail**

21 The failure to allege exclusive dealing or tying necessitates dismissal of Samsung's
 22 monopolization claims. *See PNY*, 2014 WL 2014 WL 1677521, at *8–9. Even if the Sections 1
 23 and 2 analyses are divorced, Samsung fails to plead that Broadcom had monopoly power as other
 24 suppliers existed for Samsung to source components. *See* Section II.C. And, Samsung's failure
 25 to plead federal exclusive dealing and tying claims requires dismissal of its Cartwright Act claims.
 26 *Cty. of Tuolumne v. Sonora Cnty. Hosp.*, 236 F.3d 1148, 1160 (9th Cir. 2001).

27 **III. CONCLUSION**

28 The Court should dismiss Samsung's Complaint with prejudice.

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